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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PATRICK GUIDICE, ET AL.,

Plaintiffs,

Civil Action No.: 22-cv-2877-
(PKC)(ST)

-against-

OUT-LOOK SAFETY LLC,

Defendant.

**DEFENDANT OUT-LOOK SAFETY LLC'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Out-Look Safety, LLC (“Defendant”), by and through its undersigned counsel, Holland & Knight LLP, hereby provides its Answer and Affirmative Defenses to the Complaint filed by Plaintiffs Patrick Guidice, in his fiduciary capacity as Trustee for the I.B.E.W. Local 1049 Craft Division Annuity Fund; the I.B.E.W. Local 1049 Craft Division Skill Improvement Fund; and as Business Manager of the International Brotherhood of Electrical Workers Local Union No. 1049 (“Plaintiffs”), and as for Defendant’s Answer states the following:

NATURE OF ACTION

1. Defendant admits that Plaintiffs purport to bring claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq., the Labor

Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185, et seq., and the common law but denies liability with regard to same and Defendant otherwise denies the allegations within Paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The allegations set forth in Paragraph 2 state conclusions of law that require no response. To the extent a response is required, Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 2 of the Complaint.

3. The allegations set forth in Paragraph 3 state conclusions of law that require no response. To the extent a response is required, Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 3 of the Complaint.

PARTIES

4. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 4 of the Complaint.

5. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 5 of the Complaint.

6. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 6 of the Complaint.

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits that it is an “employer” within the meaning of 29 U.S.C. §§ 1002(5) and 1145 but otherwise denies the allegations within Paragraph 8 of the Complaint.

PRELIMINARY STATEMENT

9. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 9 of the Complaint.

10. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 10 of the Complaint.

11. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 11 of the Complaint.

12. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 12 of the Complaint.

13. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 13 of the Complaint.

14. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 14 of the Complaint.

Annuity Fund

15. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 15 of the Complaint.

16. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 16 of the Complaint.

17. Defendant admits that it is an employer but otherwise denies the allegations within Paragraph 17 of the Complaint.

18. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 18 of the Complaint.

19. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 19 of the Complaint.

20. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 20 of the Complaint.

21. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 21 of the Complaint.

22. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 22 of the Complaint.

23. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 23 of the Complaint.

24. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 24 of the Complaint.

Skill Improvement Fund

25. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 25 of the Complaint.

26. Defendant admits that it is an employer but otherwise denies the allegations within Paragraph 26 of the Complaint.

27. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 27 of the Complaint.

28. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 28 of the Complaint.

29. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 29 of the Complaint.

30. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 30 of the Complaint.

31. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 31 of the Complaint.

32. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 32 of the Complaint.

33. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 33 of the Complaint.

34. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 34 of the Complaint.

35. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 35 of the Complaint.

36. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 36 of the Complaint.

37. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 37 of the Complaint.

Notification to OUT-LOOK

38. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 38 of the Complaint.

39. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 39 of the Complaint.

40. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 40 of the Complaint.

41. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 41 of the Complaint.

42. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 42 of the Complaint.

43. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 43 of the Complaint.

44. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 44 of the Complaint.

45. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 45 of the Complaint.

46. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 46 of the Complaint.

47. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 47 of the Complaint.

48. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 48 of the Complaint.

49. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 49 of the Complaint.

50. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 50 of the Complaint.

51. Defendant denies the allegations in Paragraph 51 of the Complaint.

52. Defendant denies the allegations in Paragraph 52 of the Complaint.

Violations of the CBA, ERISA, Common Law and New York State Law

53. Defendant denies the allegations in Paragraph 53 of the Complaint.

54. Defendant denies the allegations in Paragraph 54 of the Complaint.

55. Defendant denies the allegations in Paragraph 55 of the Complaint.

56. Defendant denies the allegations in Paragraph 56 of the Complaint.

57. Defendant denies the allegations in Paragraph 57 of the Complaint.

Injunctive Relief

58. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 58 of the Complaint.

59. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 59 of the Complaint.

60. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 60 of the Complaint.

61. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 61 of the Complaint.

62. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 62 of the Complaint.

63. Defendant denies the allegations in Paragraph 63 of the Complaint.

64. Defendant denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 64 of the Complaint.

65. Defendant denies the allegations in Paragraph 65 of the Complaint.

66. Defendant denies the allegations in Paragraph 66 of the Complaint.

**AS AND FOR PLAINTIFF FUNDS'
FIRST CLAIM FOR RELIEF AGAINST OUT-LOOK**

67. Defendant hereby repeats and incorporates by reference its responses to Paragraphs 1-66 of Plaintiffs' Complaint as though they were fully set forth herein.

68. Defendant denies the allegations in Paragraph 68 of the Complaint.

69. Defendant denies the allegations in Paragraph 69 of the Complaint including the allegations in subparts (a) through (f).

**AS AND FOR PLAINTIFF FUNDS'
SECOND CLAIM FOR RELIEF AGAINST OUT-LOOK**

70. Defendant hereby repeats and incorporates by reference its responses to Paragraphs 1-69 of Plaintiffs' Complaint as though they were fully set forth herein.

71. Defendant denies the allegations in Paragraph 71 of the Complaint.

72. Defendant denies the allegations in Paragraph 72 of the Complaint including the allegations in subparts (a) through (f).

**AS AND FOR PLAINTIFF LOCAL 1049'S
CLAIM FOR RELIEF AGAINST OUT-LOOK**

73. Defendant hereby repeats and incorporates by reference its responses to Paragraphs 1-72 of Plaintiffs' Complaint as though they were fully set forth herein.

74. Defendant denies the allegations in Paragraph 74 of the Complaint.

75. Defendant denies the allegations in Paragraph 75 of the Complaint including the allegations in subparts (a) through (b).

WHEREFORE, having fully answered the allegations set forth in Plaintiffs' Complaint, Defendant denies that Plaintiffs are entitled to the relief sought in subparts (a) through (i) of the WHEREFORE clause.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each purported claim alleged therein, fails to state facts sufficient to constitute a claim upon which any relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant is not liable to Plaintiffs on the causes of actions alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are estopped by their own acts, omissions, representations and/or courses of conduct from asserting the claims upon which they seek relief.

FOURTH AFFIRMATIVE DEFENSE

The alleged acts and/or omissions of Defendant are not the proximate cause of any damages sustained by the Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because any collective bargaining agreement claimed to be relevant and to which Defendant is allegedly bound must be interpreted based upon trade practice and usage as it has changed over time.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because any collective bargaining agreement claimed to be relevant and to which Defendant is allegedly bound should be declared invalid or unenforceable against Defendant due to fraudulent inducement and misrepresentation.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because any collective bargaining agreement claimed to be relevant and to which Defendant is allegedly bound should be declared invalid or unenforceable due to mutual or unilateral mistake.

EIGHTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend its Answer to include additional affirmative rights and defenses which may later become apparent during discovery in this action.

WHEREFORE, having fully answered the allegations set forth in the Complaint, Defendant respectfully requests that the Court enter judgment (a) dismissing the Complaint with

prejudice in its entirety; (b) awarding Defendant attorneys' fees, costs, and expenses incurred in connection with this action; and (c) granting such other and further relief as the Court may deem just and proper.

Dated: December 30, 2022
New York, New York

Respectfully submitted,

HOLLAND & KNIGHT LLP

/s/Loren L. Forrest, Jr.

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*Attorneys for Defendant Out-Look
Safety LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of December, 2022, a true and accurate copy of the foregoing was served on the below counsel of record through the court's electronic filing system:

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/s/Loren L. Forrest, Jr.
Loren L. Forrest, Jr.